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Committee for Purchase From People Who Are Blind or Severely Disabled

1421 Jefferson Davis Highway
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Dear John, Lee, and Members of the Committee for Purchase:

Thank you for the opportunity to comment on the proposed rules published on November 12, 2004. We understand and support your intention of ensuring that the JWOD program operates with integrity, and in such a manner as not to jeopardize the program and its value to the field in creating quality jobs for people with disabilities through the provision of goods and services to the Federal Government.

These comments represent input from the ServiceSource Network, which includes four affiliated, producing, non-profit entities in the JWOD program: ServiceSource (Virginia), Employment Source (North Carolina), Abilities, Inc. of Florida, and Opportunity Center (Delaware). Although our affiliates participate in contract opportunities under the JWOD program at differing levels, JWOD is an important part of our portfolio for creating valued opportunities for the people we serve. Our Network serves over 7000 people with disabilities in eight states and the District of Columbia with a wide variety of placement, training, employment, day support, housing, and case management services. Regarding employment programs, last year we placed over 1100 people in community employment and employed 723 in JWOD program opportunities, primarily in service contracts. The JWOD program contract revenues represented approximately 55 % of our combined program revenues of \$51.6M.

While I support your intentions regarding protection and integrity of the program, there are a number of areas in the proposed rules that create unintended negative consequences and additional administrative burdens. These detract from our core common purpose of creating expanded employment opportunities. These comments are intended to articulate field concerns, and where appropriate, offer alternatives that will be less

cumbersome. I would be pleased to provide additional information or discussion regarding these or any other items in the proposed rules.

Audit Committee Requirement-Although we are in the process of implementing an Audit Committee, it is unclear that having a separate Audit Committee will improve governance as you intend. Additionally, it is very difficult for a small Board (ours is 13 members) to adequately and representatively staff a large number of committees, particularly while ensuring both relevant expertise as well as independence from the Finance Committee. *Suggest that this requirement be eliminated.*

Rotation Requirement-We currently employ a rotation policy. However, I have also worked with non-rotating Boards and it is my experience that there are advantages and disadvantages to both approaches. Rotation does not necessarily create better governance and does require substantially more effort be spent in continual Board orientation and retraining. Board rotation creates additional administrative burden in any size organization and may be a particular hardship for small organizations. Additionally, it may vest more authority in the staff, who do not turn over with the same frequency. *Suggest that this requirement be eliminated.*

Publishing and Making Public Minutes of Board Meetings-The process and value of this proposal is unclear. Our Board deals substantially with proprietary data as well as information covered by attorney-client privilege. This requirement is potentially very cumbersome administratively and creates no obvious value, particularly if privileged information needed to be redacted. *Suggest that this requirement be eliminated.*

Executive Compensation-As written and in the context of the factors as identified, the proposed rule does not specify how and by what mix of criteria measures the Committee would determine acceptability or unacceptability of executive compensation. Additionally, the proposed rules appear to attempt to supersede Federally required Internal Revenue Service (IRS) tax-exempt organization criteria, as well as local volunteer Board of Directors legal and fiduciary authority and responsibility regarding the effective oversight of the organizations programs. This may create a significant JWOD participation dilemma for large organizations in the program, as well as an issue of enforcement defensibility for the Committee. Specific comments and suggestions regarding this area as proposed follow:

Use of SES Specific Figure and Generally for Comparability-No reasonable comparability rationale exists for using SES or other Federal employment as a comparison factor for work performed in the private, non-profit sector. Additionally, the definition of factors to be included in total compensation, as written, do not provide an accurate common basis of comparison. *Suggest this component be eliminated.*

Median compensation of Direct Workers Comparison-It is unclear whether this applies to only JWOD or to all agency direct labor workers. In either event, the requirement is cumbersome, but even more disturbing, sends a message that participating agencies are discouraged from serving and employing people with the most significant barriers to employment, particularly productivity barriers. There are already so many difficulties for individuals with the most significant barriers participation in the labor force, as individuals and in systemic service design, that it seems this

would be a most unwelcome deterrent to using the JWOD program to attempt to place people with significant productivity barriers in any meaningful way. *Strongly encourage that this requirement be eliminated.*

Investigation of Violations-The proposed standards do not make clear the criteria or differentiation of standards by which a non-profit would be considered in violation of Committee rules regarding governance and compensation, provided that the organization is in compliance with IRS, accreditation, and various other regulatory or legal requirements. Nor is it clear, in absence of that clear differentiation, by what process and authority the Committee staff would pre-empt the legal and fiduciary responsibility of the voluntary Board of Directors. *Suggest that the requirements and process for determining violations be clear and, to the extent feasible, use existing systems to determine compliance.*

Reporting and Certification- The requirements as written are not very clear and appear to be both cumbersome and duplicative (but off-cycle) of other normally required Federal, State, and local reporting. Also, since most organizations either use external independent auditors to prepare Form 990 information (which we do) or use independently audited information as the basis of the statement, it is potentially unfeasible to expect certification of information provided outside and off-cycle of that process. *Suggest that the information and process for assuring it be reconsidered and made consistent with existing systems and requirements.*

General Comments and Suggestions:

Limitation on JWOD participation in Executive Compensation-The Committee has already effectively limited JWOD participation in executive salaries by the imposition of a usual cap on general and administrative expenses (in which executive salaries and all non-direct expenses of the contract are included) of 9.5 percent. *The Fair Market Pricing and Review processes, by design, already accomplish a limitation of JWOD contribution to any indirect salaries (including executive compensation) and non- contract costs of the organization.*

General Requirements - Executive Compensation - The Committee has an interest in ensuring that the voluntary Board of Directors understands and is meeting the legal and fiduciary responsibilities as required by the IRS for tax-exempt organizations. The IRS has rules about voluntary Board of Directors obligations regarding executive compensation. These include requirements to consider comparability data such as the Committee rules propose, as well as requirements for documentation. *A simple and relatively inexpensive way to assess whether the non-profit Board is fulfilling its responsibilities would be to require a periodic (once every three to five years) review and opinion by the external independent auditor to that effect.* To ensure that does not create an additional and unnecessary burden for smaller programs, you could exempt an organization with revenues of under \$1M, provided that no employee receives more than \$200k in total compensation.

General Requirements – Non-duplication and simplicity -Participating organizations are already required to provide an IRS Form 990 to any individual or organization that requests a copy. Additionally, many non-profits hold contracts or have other liabilities that require the submission of annual independent audited financial statements which provide externally verified data on a fiscal year basis. *Suggest that, if the Committee requires financial data from its producing non-profits, it utilize existing (independently prepared and verified) reports such as the IRS Form 990 and annual independent audit.*

If the Committee or Committee staff have cause to believe that information has been improperly or illegally provided regarding contents of the Form 990 or to the independent auditors, the simple solution would be to ask the IRS, the U.S. Government's tax exempt organization oversight arm, to investigate on the Committee's behalf. IRS tax-exempt law allows intermediate sanctions, holding key officials personally accountable, for violation of tax-exempt purposes and excess benefit transactions. *Using existing investigative systems would eliminate the necessity for the Committee to develop and implement an investigation and appeal system redundant with government systems already designed for that purpose.*

Particularly now, with the Senate Finance Committee and the IRS itself concerned with review and change to the requirements of 501 (c) (3) organizations (of which JWOD producers are an extremely small subset) and tax-exempt and Form 990 requirements, it makes sense to have one set of systems and processes. This is particularly important given that the IRS has announced its intent to request an additional \$30 M in FY 2006 to substantially increase investigative activities and having potentially differing or competing requirements increases compliance risk.

Governance - Best Practices- It appears to be Committee intent in these proposed rules to inform and encourage governance best practices among its participating non-profits. All JWOD producing non-profits, regardless of size, face an increasingly complex environment, with regularly imposed new unfunded mandates. These unfunded mandates create an increasing diversion of resources to administrative functions and oversight, increasing overhead costs and creating no direct benefit for the people we serve. Most organizations are interested in doing the "right" and "best" thing to improve services and systems and will readily adopt a customized approach to continual improvement and update if given the resources and support. The JWOD system could support that by requesting that the *Central non-profit agencies develop useful, timely easily accessible materials for Boards of Directors regarding governance best practices - such as templates for governance principles, code of ethics, conflict of interest, policies, executive limitations, executive compensation, legal requirements and other areas of concern.*

Additionally, rather than develop duplicative review and "certification" systems, the Committee, or NISH and NIB if directed by the Committee, could adopt existing, industry accepted governance and organizational quality certification processes, such as CARF, the Rehabilitation Commission, as a requirement for participation. This could include development of JWOD specific criteria into the process, if needed.

In conclusion, we hope that you will consider these and other field comments regarding the impact of the proposed regulations as you proceed with a process to look at oversight and

governance functions among JWOD producing organizations. To help assure our common purpose, it is important that the final rules adopted create the intended outcome, without unintended negative consequences on individual or organizational participation in the JWOD program. I would be open to help provide field background and comment in additional discussion forums as the process moves forward. Thank you for this opportunity to comment.

Sincerely,

A handwritten signature in cursive script, appearing to read "Janet Samuelson".

Janet Samuelson
President and Chief Executive Officer